IN THE HIGH COURT OF BOMBAY AT GOA
***

FIRST APPEAL NO.62 OF 1997

Shri Frank Moraes (since deceased), House No.32, Ward Bencleamvaddo, V.P. Cuncolim, Salcete, Goa, through his Legal Representatives:-

1(a) Mrs. Joana Lactancia Piedade Coutinho e Moraes alias Mrs. Jonita Moraes,
1(b) Mr. Mario Moraes,
(c) Mrs. Myra Moraes e Coutinho,
(d) Mr. Corwin Coutinho,
(e) Miss Michelle Moraes,
all the legal heirs are represented in this Appeal by their duly constituted Attorney Shri Mario Moraes, r/o House No.32, Ward Bencleamvaddo, V.P. Cuncolim, Salcete, Goa. ... Appellant.

Versus

1. Shri Joaquim de Mascarenhas Fuiza (known as Condade de Cuncolim) represented by his Power of Attorney, Dr. J. Carvalho, r/o Veroda, Cuncolim, Salcete, Goa,

2. M/s. Sociedade de Agricola de Gauncares de Cuncolim e Veroda, having office at Cuncolim, Near Cuncolim Church, Salcete, Goa, represented by its President, Shri Pio Lourenco, advocate, r/o Biunsa, Cuncolim, Salcete, Goa,

3. The Collector of Goa, Collectorate Office, Govt. of Goa, Daman & Diu, Panaji, Goa,

4. Director of Land Survey, Directorate of Land Survey, Govt. of Goa, Daman & Diu, Panaji, Goa,

5. Special Land Acquisition Officer, Selaulim Irrigation Project, Sanguem Taluka, Goa,

6. The Secretary, Ministry of Home Affairs, Govt. of India, New Delhi, and

7. The Administrator, Govt. of Goa, Daman and Diu, Secretariat, Panaji, Goa. ... Respondents.

Mr. J. Godinho, advocate for the appellant.

Mr. N. N. Sardessai, advocate for respondent no.2.

CORAM : S. A. BOBDE, J.

DATE : 5th August, 2004.

ORAL JUDGMENT

This is an appeal by an unsuccessful plaintiff whose suit for declaration that he is the absolute owner of the suit property has been dismissed.

2. The plaintiff, Frank Moraes, sued the respondent no.1, Joaquim de Mascarenhas Fiuza and the respondent no.2 Society, for the following reliefs:-

> "(a)(i)'The plaintiff be also declared the absolute owner in possession of the suit lands at present described under:-
>
> L.S.Nos.433/1,2,3 and 4 and L.S. No.401/1, in addition to the one mentioned in the suit property, namely 394/1, 2 and 3, corresponding to old Portuguese Land Survey Nos.314, 315, 316, 317 and 318 described under Old Portuguese Land Survey Map No.16035."
>
> (b) That this Hon'ble Court by its Judgment and decree be pleased to declare that the plaintiff is entitled to receive the amount deposited by the defendants no.3 and 5 in the Court of the District Court at Panjim, under their No. SLAO/71/363/79 dated 23.7.1979, provenient from the Land

> Acquisition Award No. SLAO/SLP/1971 dated 29.1.1979. This award amount alongwith the respective file have since been transferred to this Hon. Court on jurisdiction grounds.
>
> (c) That this Hon. Court by its Judgment and decree grant a permanent injunction against the defendants, namely defendants nos.1 and 2 restraining them their agents or servants or any other person or persons from encroaching upon and occupying the suit land or claiming any other right; from entering, trespassing, encroaching upon, erecting any constructions, huts, structures, rooms or cattle sheds in the plaintiff's property."

3. The plaintiff has stated in para 1 of the plaint that he is the absolute owner and possessor alongwith other co-owners of the landed property. However, while seeking the declaration he has sought to be declared as the absolute owner in possession. In fact, in his deposition also he has told the Court that his name should be inserted in the appropriate column as the owner in possession. In other words, it is clear that the plaintiff sought a declaration that he is the sole owner of the property and not a joint owner alongwith others. The plaintiff has sued for being declared that he is the absolute owner in possession of the suit lands presently described under survey nos.433/1, 2, 3, 4, survey no.401/1, survey no. 394/1, 2 and 3 corresponding to the old land survey map no.16035. He has sought for a rectification and correction of the survey records relating to survey no.394, which is wrongly recorded in the name of the Court Receiver.

4. The plaintiff examined himself alone in support

of the suit claim. The defendant no.1 examined his power of attorney and the other witnesses are on behalf of defendant no.2. After hearing the evidence and perusing the documents on record, the trial Court has come to the conclusion that the property appears to have belonged to one Caetano Moraes and the plaintiff has not at all shown as to how he has succeeded Shri Caetano Moraes. In fact, the trial Court has held that there is no document on record to show that the plaintiff is the owner of the suit properties.

5. Mr. Godinho, learned counsel for the appellant, however, relied on a document which is described as title deed in which the Registrar of Lands has described one property bearing land registration no.11223 as belonging to one Minguel Moraes, landlord, resident of Cuncolim on 29th August, 1881. This property is subsequently described in the year 1883 as having come in by way of inheritance to one Brigida Fernandes upon the death of her husband Minguel Moraes. The learned counsel further relied on the deposition of the plaintiff who had stated on oath on the basis of a certificate that his Great Grand-father was one Minguel Moraes. According to the learned counsel, therefore, the property in question has devolved on the plaintiff.

6. Mr. Sardessai, learned counsel for the respondent no.2, however submitted that this documents referred to above at Exh.P.1 itself shows that the document

contains a recital as follows:-

> "I have issued this certificate which is signed by me after it is reviewed and corrected, at the request of FRANK MORAES, resident of Cuncolim, presented under number one of todays diary.
>
> Civil Registration Office, Salcete Taluka, Margao, dated First July, 1987."

7. Mr. Sardessai, therefore, challenges the authenticity of the contents of these documents. From this document it is difficult to deduce the present identity of the property known as "Moroda-Carojem". I am of the view that it was necessary for the plaintiff, assuming that he is the Great Grand-father of Minguel Moraes, to have co-related this property to the present suit land described under the survey numbers referred to above. In other words, it was necessary for the plaintiff to have examined an independent surveyor, who co-related the property referred to in Exh. P.1 to the present survey numbers. This has not been done and it is therefore difficult to agree with the plaintiff that the property belongs exclusively to him.

8. In fact, presently, the property is in the possession of the respondents and, in particular the members of the respondent no.2 Society, who have admittedly built their respective houses on the property. It is, therefore, difficult to accept the plaintiff's claim that the plaintiff is the exclusive owner in possession of the property, since the plaintiff has himself admitted that houses have come up

on the suit property. The plaintiff has further accepted the position that he ha had to file several suits, about 17, for eviction of the persons in occupation of the property. I am, therefore, in agreement with the finding of the trial Court that the plaintiff is not in possession of the property and is not entitled to any relief on that basis.

9. I am of the view that the objection raised by the learned counselfor the respondents regarding maintainability of the suit is liable to be upheld. According to Mr. Sardessai, learned counsel for the respondent no. 2, the suit is one for being declared as absolute owner of the property in question. Admittedly, from the plaint averments itself there are other co-owners of the property. According to the learned counsel, such a suit is not tenable without joining the other co-owners as parties to the suit. The learned counsel has relied on a decision of this Court reported in 1990(2) Goa L.T. 220 in the case of **Yeshwant Siuram Porobo & Ors. vs. Gagarama Loximona Shet Gaunkar,** where this Court observed as follows:-

> "10. I already observed that in a suit for declaration of title all the co-owners are necessary parties and therefore, if one or more of them are not impleaded or after being impleaded and having expired, their legal representatives are not brought on record, the suit without all the co-owners on record becomes incompetent and cannot be maintainable."

10. The learned counsel for the appellants relied on

a decision of the Supreme Court in **Laxmishankar Harishankar Bhatt vs. Yashram Vasta (dead) by L.Rs.,** reported in AIR 1993 S.C. 1587. That decision however, has no application to the facts of the present case since that was a suit filed by a co-owner for recovery of possession against a trespasser and not for a declaration of exclusive ownership, as in the present case. I am of the view that the objection regarding the suit suit being bad for non-joinder of necessary parties is maintainable and must be upheld. The suit is not maintainable since it seeks a declaration that the plaintiff is the absolute owner of the suit property without joining the other co-owners. This reason is sufficient for dismissal of the suit.

11. In the circumstances, I find the suit is not maintainable and dismiss the same. The Appeal stands dismissed without any order as to costs.

S.A. BOBDE, J.

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